1 2 3	MICHAEL J. STORTZ (SBN 139386) michael.stortz@dbr.com MARSHALL L. BAKER (SBN 300987) marshall.baker@dbr.com DRINKER BIDDLE & REATH LLP	
4	50 Fremont Street, 20th Floor San Francisco, CA 94105-2235	
5	Telephone: (415) 591-7500 Facsimile: (415) 591-7510	
6	Attorneys for Defendant	
7	THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY	
8	STEPHEN C. BAKER	
9	stephen.baker@dbr.com TIMOTHY J. O'DRISCOLL	
10	timothy.odriscoll@dbr.com DRINKER BIDDLE & REATH LLP	
11	One Logan Square, Ste. 2000 Philadelphia, PA 19103-6996	
12	Telephone: (215) 988-2700 Facsimile: (215) 988-2757	
13	Of Counsel for Defendant	
14	THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY	
15	LINITED STAT	ES DISTRICT COURT
16		TRICT OF CALIFORNIA
17		
18	UAKLA	AND DIVISION
19	CANICODD I WICHNEY individually and	Cosa No
20	SANFORD J. WISHNEV, individually and on behalf of all others similarly situated,	Case No
21	Plaintiff,	DEFENDANT'S NOTICE OF FILING OF REMOVAL AND REMOVAL TO
22	v.	FEDERAL COURT, UNDER 28 U.S.C. §§ 1441, 1446 AND 1453
23	THE NORTHWESTERN MUTUAL LIFE	
24	INSURANCE COMPANY, a Wisconsin corporation, and DOES 1-10, inclusive,	
25	Defendants.	
26		
27	Defendant THE NORTHWESTERN	MUTUAL LIFE INSURANCE COMPANY
28	("Northwestern Mutual"), by and through und	dersigned counsel and pursuant to 28 U.S.C. §§
E &	DEFENDANT'S NOTICE OF FILING OF REMOVAL & REMOVAL TO FEDERAL COURT	CASE No.

DRINKER BIDDLE & REATH LLP ATTORNEYS AT LAW SAN FRANCISCO 1441, 1446 and 1453, hereby gives notice of the removal of this action from the Superior Court of California, Contra Costa County, to the United States District Court for the Northern District of California, Oakland Division. In support thereof, Northwestern Mutual avers as follows.

JURISDICTIONAL STATEMENT

- 1. The Class Action Fairness Act of 2005 (CAFA), Pub. L. No. 109-2, 119 Stat. 4 (2005) grants federal courts jurisdiction over class actions in which there is: minimal diversity; an aggregate amount in controversy in excess of \$5,000,000; and 100 or more class members. *See* 28 U.S.C. §§ 1332(d)(2)(A), 1332(d)(5)(B), 1332(d)(6).
- 2. This Court has original jurisdiction over this action pursuant to CAFA because: (1) it was commenced after February 18, 2005; (2) there is minimal diversity; (3) there are more than 100 putative class members; and (4) the aggregate amount in controversy exceeds \$5,000,000.
- 3. On or about July 14, 2015, Plaintiff Sanford J. Wishnev ("Plaintiff") commenced this action by filing a putative class action complaint in the Superior Court of California, Contra Costa County, under the caption Sanford J. Wishnev v. The Northwestern Mutual Life Insurance Company, No. C15-1242 ("Pl. Compl."), attached hereto as Exhibit A.
- 4. Accordingly, this action was commenced more than ten (10) years after CAFA's effective date.
- 5. Northwestern Mutual is a citizen of Wisconsin because it is incorporated in Wisconsin, Pl. Compl. ¶ 4 (Northwestern Mutual "is a Wisconsin corporation"), and has its principal place of business, *i.e.*, its "nerve center," in Wisconsin. *Id.* (Northwestern Mutual's "principal place of business is in Milwaukee, Wisconsin"). *See also Hertz Corp. v. Friend*, 559 U.S. 77 (2010) (adopting nerve center test for determining corporations' principal place of business).
- 6. Plaintiff is a citizen of California, Pl. Compl. ¶ 3 ("Plaintiff Sanford J. Wishnev is an individual residing in Contra Costa County, California..."), who brings this putative class action on behalf of "[a]ll California persons as to whom Northwestern Mutual's records show that they have been charged compound interest by Northwestern Mutual on life insurance policy and/or premium loan balances within the last four years." *Id.* ¶ 21.

- 7. Accordingly, there is minimal diversity between Northwestern Mutual (a Wisconsin citizen) and Plaintiff and other members of the putative class (California citizens). *See* 28 U.S.C. § 1332(d)(2)(A).
- 8. Plaintiff alleges that the putative class "numbers in the hundreds or thousands" and that "[j]oinder of all class members is impracticable." Pl. Compl. ¶ 22.
- 9. Accordingly, there are more than 100 (indeed, allegedly thousands of) members of the putative class. *See* 28 U.S.C. § 1332(d)(5)(B).
- 10. Plaintiff generally alleges that in violation of California Civil Code Section 1916-2, and "as a uniform practice, Northwestern Mutual does not obtain from policyholders any agreement signed by them authorizing Northwestern Mutual to charge compound interest on policy and/or premium loans." Pl. Compl. ¶ 20. Plaintiff further alleges "[o]n information and belief," that "Northwestern Mutual nevertheless charges and collects compound interest on such loans." *Id*.
- 11. Pursuant to Civil Code Section 1916-3, Plaintiff seeks, for himself and for putative class members, "repayment from Northwestern Mutual of treble the amount of all interest paid or charged within one year past." Pl. Compl. ¶ 38; see also id., Prayer for Relief ¶ (h) (alleging entitlement to "treble the amount of all interest paid or equivalent value delivered by class members to Northwestern Mutual from one year prior to filing of this complaint to the date of final judgment[.]").
- 12. Over the one (1) year period preceding the filing of Plaintiff's Complaint, the total amount of interest charged by Northwestern Mutual on policy and premium loan balances on life insurance policies issued to California policy owners has exceeded \$5,000,000, exclusive of any trebling of that amount. Upon trebling, the total amount in controversy under Civil Code Section 1916-3 would exceed \$15,000,000.
- 13. Plaintiff also seeks relief in the form of, *inter alia*, an award of "costs of suit and attorneys' fees," Pl. Compl., Prayer for Relief \P (j), including attorneys' fees incurred pursuing claims on behalf of putative class members. *See id.* \P (a). Using the "benchmark" of 25% of potential classwide recovery as the measure of potential fee recovery would place in controversy Defendant's Notice of Filing of Removal

& REMOVAL TO FEDERAL COURT

DRINKER BIDDLE &
REATH LLP
ATTORNEYS AT LAW
SAN FRANCISCO

& REMOVAL TO FEDERAL COURT

- 4 -

Case No.

DRINKER BIDDLE & REATH LLP
ATTORNEYS AT LAW
SAN FRANCISCO

EXHIBIT A



SUMMONS (CITACION JUDICIAL)

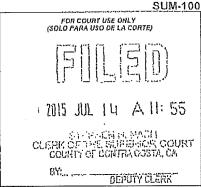
NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, and DOES 1-10, inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

SANFORD J. WISHNEY, individually and on behalf of all others similarly situated

(El nombre y dirección de la corte es): Contra Costa County Superior Court,



NOTICE! You have been sued. The court may decide against you without your boing heard unless you respond within 30 days. Read the information

below.
You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court end have a copy served on the plaintiff. A lotter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts. Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filling fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral earlies, if you cannot afford an attorney; you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcallfornia.org), the California Courts Online Self-Help Center (www.coutlinfo.ca.gov/sell/he/p), or by contacting your local court or county bar association. NOTE: The court has a statutory lion for waived feas and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. JAVISOI Le han demandado. Si no responde dentre de 30 dias, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DIAS DE CALENDARIO dospués de quo lo entreguen esta citación y papeles legales para presentar una respuesta por escrito on osta corto y hacer que se entregue una copia al demondante. Una caria o una llamada (elefónica no la prolegen. Su respuesia por escrito tiene que estar en formalo legal correcto si desas que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puode encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucona.ca.gov), en la bibliotoca de leyas de su condado o en la corte que la quede más cerca. Si no puede pager la cuata de presentación, pida al sacretario de la corte que le dé un formulario de exención de pago de cualus. Si no presente su respuesta a flempo, puede perder el caso por incumplimiento y la carte la padrá quitar su sueldo, dinero y bianes sin más advartencia.

Hay otros requisitos legales. Es recomendabla que llama a un abogado inmediatamento. Si no conoce a un obogado, puede llamar e un servicio de ray vives requisites regares. Ea recomerciale que name a un abagado infranciariante, a in conoce a un abagado, pagar a un abagado, os posible que cumpla con los requisitos pere obtener servicios legales gintines de lucro. Puede encontrar estos grupos sin fines de lucro en el silio veb de California Legal Services, (www.lawhelpcalliamla.org), en al Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en cartacto con la corte o el colegio de ebagados locales. AVISO: Par ley, la corte tione doractio a rectamar las cuolas y los costos exentos por imponer un gravamen sobre cualquier recuporación de \$10,000 ó más de valor recibida mediante un aquerdo o una concesión de arbitrajo en un caso de derecho civil. Tiene que pegar el gravamen de la corte anles de que la corte pueda desechar el caso. GASE (LIMERIC) CO 1 2 4

Wakefield Taylor Court (925) 646-4099	house, 725 Court Street, Mar	tinez, CA 94553	Lety that A S A S and as	
(El nombre, la dirección y el n	phone number of plaintliffe attorney, número de teléfono del abogedo de	l demandante, o del demandante	que no liene abogado, es):	•
Robert M. Bramson, 21	25 Oak Grove Road, Suite 1	zo, wainut Creek, CN 9439	6 (923) 943-0200	
DATE:		Clerk, by		Deputy
(Fecha)	IIII 1 A 2015	(Secretario)	م جنوب بدر در د	(Adjunto)
(For proof of service of this su	minions, use Proof of Service of Su	mmons (form POS-010).)		
(Pera prueba de entrega de e	sta citatión uso ol formulano Proof		O)}.	
	NOTICE TO THE PERSON SEI	RVED: You are served		
[8E41]	1. as an individual defend			
	2. as the person sued un-	der the fictitious name of (specify)	V7	
		The Northwestern Mutual Life	Anguennes Company	
			madrance Company,	
	3. Son behalf of (specify):	a Wisconsin corporation		•
	under: X CCP 415.10 (c	corporation)	CCP 416.60 (minor)	
	CCP 416.20 (defunct corporation)	CCP 416.70 (conservated	i)
	, <u>, , , , , , , , , , , , , , , , , , </u>	association or partnership)	CCP 416.90 (authorized p	erson)
	other (specify)	<u>):</u>		

The name and address of the court is:

4. by personal delivery on (dete):

Page t of 1

Superior Court of California, County of Contra Costa

NOTICE TO DEFENDANTS

In Unlimited Jurisdiction Civil Actions

YOU ARE BEING SUED. The packet you have been served should contain:

- a. The Summons
- b. The Complaint
- c. The Notice of Case Management (shows hearing date and time)
- d. Blank: Case Management Statement (Judicial Council Form CM-110)
- e. <u>Blank</u>: Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b)
- f. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c)



WHAT DO I DO NOW?



You must:

- 1. Prepare your response YOU COULD LOSE YOUR CASE—even before it is heard by a judge or before you can defend yourself, if you do not prepare and file a response on time. See the other side of this page for types of responses you can prepare.
- 2. Complete the Case Management Statement (CM-110)
- 3. File and serve your court papers on time Once your court forms are complete, you must file 1 original and 2 copies of the forms at court. An adult who is NOT involved in your case must serve one set of forms on the Plaintiff. If you were served in person you must file your response in 30 days. If the server left a copy of the papers with an adult living at your home or an adult in charge at your work or you received a copy by mail you must file your response in 40 days.
- 4. Prove you served your court papers on time by having your server complete a *Proof of Service*, (Judicial Council form POS-040), that <u>must</u> be filed at the court within <u>60</u> days.
- 5. Go to court on the date and time given in the Notice of Case Management Conference.
- 6. Consider trying to settle your case before trial If you and the other party to the case can agree to use mediation, arbitration or neutral case evaluation, the <u>Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days</u> can be filed with your other papers. For more information read the enclosed ADR information, visit www.cc-courts.org/adr, or call (925) 957-5787.

IMPORTANT! The court recommends consulting an attorney for all or part of your case. While you may represent yourself, lawsuits can be complicated, and the court cannot give you legal advice.

<u>COURT FEES:</u> You must pay court fees the first time you file your papers. If you also file a motion, you must pay another fee. If you cannot afford the fees, you may ask the court to waive (allow you not to pay) fees. Use Judicial Council forms FW-001-INFO [information sheet]; FW-001 [application]; and FW-003 [order].

<u>COURT FORMS:</u> Buy forms at the Forms Window in the Family Law Building or download them for free at: www.courtinfo.ca.gov/forms/

Local Court Form -- Instructions CV-656d/Rev. 11/06/2007

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF CONTRA COSTA

L-L-WANGE CONTRACTOR	— I a vera cert like va like ve ander e e e e e		
PlaintIff(s)	/ Cross Plaintiff(s)		
VS.	<u> At</u>	OR Case Management Stipula (Unlimited Jurisdiction Civ	
Defendant(s) / C	Cross Defendant(s)	CASE NO:	,
MUST SUBMIT THE ORDER FOR	THE JUDGE'S SIGNATURI	CASE MANAGEMENT CONFERENCE AND FILE THIS FORM AT LEAST 1 AVAILABLE IN COMPLEX LITIGATION	15 DAYS
► PARTIES MUST ALSO SEND A CO FAX: (925) 957-5689 MAIL: P.O. BO	OX 911, MARTINEZ, CA 945		OFFICE:
Counsel and all parties agree to delay t complete pre-ADR discovery as follows	heir case management cor		
c. ADR shall be completed by (da 2. The parties will complete the following a a. D Written discovery: (D Ade i. D Interrogatories to: ii. D Request for Producti- iii. D Request for Admission iv. D Independent Medical v. D Other: b. D Deposition of the following principle. iii. iii. c. D No Pre-ADR discovery need 3. The parties also agree: 4. Counsel and self-represented parties re ADR as provided in Appendix C, will	R as follows: rt-connected □ Private) cial Arbitration (non-binding) ion sted by (date):	(no more than 14 days after in more than 90 days after filing this for ditional page(s) attached) th and will fully comply with all local contit these services, and understand the services of the services.	filing this form) form) form) form
without good cause, comply with this at		al court rules, they may be subject to s Counsel for Defendant (print)	Fax
Signature		Signature	r vors Name (1994) en
Counset for Plaintiff (print)	M. steel as	Counsel for Defendant (print)	Fax
Signature		Signature	STERRITE CONTRACTOR
Pursuant to the Stipulation of the parties, a the Case Management Conference set for (8:30 a.m. /) Plaintiff / Plainti	' is vad	eated and rescheduled for	at ant conference.
		Judge of the Superior Co	urt

;

	CM-110
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Ber number, and address):	FOR GOURT USE ONLY
TELEPHONE NO.: FAX NO. (Optional):	
E-MAII, ADDRESS (Optional):	
ATTORNEY FOR (Numb):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
PLAINTIFF/PETITIONER:	A A A A A A A A A A A A A A A A A A A
DEFENDANT/RESPONDENT:	
AND	OLOS HILLOND
CASE MANAGEMENT STATEMENT	GASE NUMBER:
(Check one): UNLIMITED CASE LIMITEI	
(Amount demanded (Amount demanded exceeds \$25,000) or less)	t demanded is \$25,000
PP-48000-55-00-01-01-01-01-01-01-01-01-01-01-01-01-	ADAMANY CONTROL ADAMANA (CONTROL ADAMAN) CONTROL ADAMAN (CONTROL ADAMAN (CONTROL ADAMAN) CONTROL ADAMAN (CONTROL ADAMAN (CONTR
A CASE MANAGEMENT CONFERENCE is scheduled as follows	
Date: Time:	Dept.: Div.: Room:
Address of court (if different from the address above):	
Notice of Intent to Appear by Telephone, by (name):	
MICTOLOTIONS: All qualitable boyes must be che	cked, and the specified information must be provided.
	and the openined hitothistion mast be provided.
1. Party or parties (answer one):	
a. This statement is submitted by party (name):	and the
b This statement is submitted jointly by parties (nar	nes):
2. Complaint and cross-complaint (to be answered by plaintiff	s and cross-complainants only)
a. The complaint was filed on (date):	
b. The cross-complaint, if any, was filed on (date):	
· · · · · · · · · · · · · · · · · · ·	
3. Service (to be answered by plaintiffs and cross-complainants	- ,
	blaint have been served, have appeared, or have been dismissed.
b. The following parties named in the complaint or cr	
(1) have not been served (specify name.	з апа өхргаги wny noty:
(2) have been served but have not appe	ared and have not been dismissed (specify names):
p. Language	
(3) have had a default entered against the	em (specify names):
c. The following additional parties may be added (sp	ecify names, nature of involvement in case, and date by which
they may be served):	
4. Description of case	
a. Type of case in complaint cross-complaint	mplaint (Describe, including causes of action):

į

PLAINTIFF/PETITION	VER:	CASE NUMBER:
— DEFENDANT/RESPONDE	ENT:	
10. c. Indicate the ADR p have already partic	process or processes that the party pripated in <i>(check all that apply and)</i>	or parties are willing to participate in, have agreed to participate in, or provide the specified information):
	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation	· ·	Mediation session not yet scheduled Mediation session scheduled for (date): Agreed to complete mediation by (date): Mediation completed on (date):
(2) Settlement conference		Settlement conference not yet scheduled Settlement conference scheduled for (date): Agreed to complete settlement conference by (date): Settlement conference completed on (date):
(3) Neutral evaluation		Neutral evaluation not yet scheduled Neutral evaluation scheduled for (date): Agreed to complete neutral evaluation by (date): Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration		Judicial arbitration not yet scheduled Judicial arbitration scheduled for (date): Agreed to complete judicial arbitration by (date): Judicial arbitration completed on (date):
(5) Bindlng private arbitration		Private arbitration not yet scheduled Private arbitration scheduled for (date); Agreed to complete private arbitration by (date); Private arbitration completed on (date):
(6) Other (<i>specify</i>):		ADR session not yet scheduled ADR session scheduled for (date): Agreed to complete ADR session by (date): ADR completed on (date):

		construction of the constr	CM-110
PLAINTIFF/PETITIONER:		CASE NUMBER:	
DEFENDANT/RESPONDENT:	CALL TO FUND OF THE STATE OF TH		Na March 1 of 1 th Strategy of the Control of the C
 17. Economic litigation a. This is a limited civil case (i.e., the amount demanded is \$2 of Civil Procedure sections 90-98 will apply to this case. b. This is a limited civil case and a motion to withdraw the cas discovery will be filed (if checked, explain specifically why e should not apply to this case): 	e from the economic	c litigation procedures	or for additional
18. Other issues The party or parties request that the following additional matter conference (specify):	rs be considered or	determined at the cas	ë management
19. Meet and confer a The party or parties have met and conferred with all parties of Court (if not, explain):	on all subjects requ	uired by rule 3.724 of th	ne California Rules
b. After meeting and conferring as required by rule 3.724 of the Ca (specify):	ilifornia Rules of Co	urt, the parties agree (on the following
20. Total number of pages attached (If any): I am completely familiar with this case and will be fully prepared to discuss well as other issues raised by this statement, and will possess the authority of the case management conference, including the written authority of the Date:	thority to enter into	stipulations on these is	dispute resolution, ssues at the time of
	•		
(TYPE OR PRINT NAME)	(\$	IGNATURE OF PARTY OR ATT	ORNEY)
(TYPE OR PRINT NAME)		SIGNATURE OF PARTY OR ATT Ignatures are attached	



CONTRA COSTA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

All judges in the Civil Trial Delay Reduction Program agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the Case Management Form (CM-110);
- File a Stipulation and Order to Attend ADR and Continue First Case Management Conference 90-Days (local court form); or
- · Agree to ADR at your first court appearance.

Questions? Call (925) 957-5787, or go to www.cc-courts.org/adr

MEDIATION

Mediation is often faster and less expensive than going to trial. Mediators help people who have a dispute talk about ways they can settle their case. Parties call or visit the ADR Programs office to get a list of mediators. After parties have agreed on a mediator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the mediator at least 5 court days before mediation starts.

ALL parties and attorneys must go to mediation. Mediation can be held whenever and wherever the parties and the mediator want, as long as they finish before the court deadline. In some kinds of court cases, parties have the chance to mediate in the courthouse on their trial day.

Most mediators begin by talking with the parties together, helping them focus on the important issues. The mediator may also meet with each party alone. Mediators often ask parties for their ideas about how to settle the case. Some mediators tell the parties how much money they think a case is worth, or tell them what they think might happen if the case went to trial. Other mediators help the parties decide these things for themselves. No matter what approach a mediator takes, decisions about settling a case can only be made when all the parties agree.

If the parties go through the court ADR program, mediators do not charge fees for the first half hour spent scheduling or preparing for mediation. They also do not charge fees for the first two hours of mediation. If parties need more time, they must pay that person's regular fees. Some mediators ask for a deposit before mediation starts. Mediators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the mediation. A party whose court fees have been waived (cancelled) may ask if their mediation fees or deposit can be waived.

If parties agree about how they will settle their case, they can choose to keep it private, write it up as a contract, or ask the judge to make it a court order. What parties say and agree to in mediation is confidential (private).

PRIVATE MEDIATION

Private mediation works in the same way as judicial mediation, but the parties do not go through the ADR Programs office. Parties choose a mediator on their own, and pay the mediator's normal fees.

Local Court Form – information CV-655c/Rev. 11/05/2007

TEMPORARY JUDGE

Some parties want a trial, but want to choose who will decide the case and when the trial will take place. Parties can agree on an attorney that they want the court to appoint as a temporary judge for their case. (See Article 6, Section 21 of the State Constitution and Rule 2.830 of the California Rules of Court.) Temporary judges have nearly the same authority as a superior court judge to conduct a trial and make decisions. As long as the parties meet the court deadline, they can schedule the trial at their own and the temporary judge's convenience.

Each of the temporary judges on the court's panel has agreed to serve at no charge for up to 5 court days. If the parties need more time, they must pay that person's regular fees. All parties and their lawyers must attend the trial, and provide a copy of all briefs or other court documents to the temporary judge at least two weeks before the trial. These trials are similar to other civil trials, but are usually held outside the court. The temporary judge's decision can be appealed to the superior court. There is no option for a jury trial. The parties must provide their own court reporter.

SPECIAL MASTER

A special master is a private lawyer, retired judge, or other expert appointed by the court to help make day-to-day decisions in a court case. The special master's role can vary, but often includes making decisions that help the discovery (information exchange) process go more smoothly. He or she can make decisions about the facts in the case. Special masters can be especially helpful in complex cases. The trial judge defines what the special master can and cannot do in a court order.

Special masters often issue both interim recommendations and a final report to the parties and the court. If a party objects to what the special master decides or reports to the court, that party can ask the judge to review the matter. In general, the parties choose (by stipulation) whom they want the court to appoint as the special master, but there are times (see California Code of Civil Procedure Section 639), when the court may appoint a special master or referee without the parties' agreement. The parties are responsible to pay the special master's regular fees.

COMMUNITY MEDIATION SERVICES

Mediation Services are available through non-profit community organizations. These low-cost services are provided by trained volunteer mediators. For more information about these programs contact the ADR Program at (925) 957-5787

SUPERIOR COURT - MAL INEZ COUNTY OF CONTRA COSTA MARTINEZ, CA 94553

SANFORD WISHNEY VS. THE NORTHWESTERN MUTUAL MSC15-01242

> NOTICE OF ASSIGNMENT TO DEPARTMENT SEVENTEEN FOR CASE MANAGEMENT DETERMINATION

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, AND A BLANK CASE MANAGEMENT STATEMENT ARE TO BE SERVED UPON ALL OPPOSING PARTIES, ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT.

- 1. This matter has been assigned to Department 17, Judge B. Goode presiding, for all purposes; Department 17 is designated as the complex litigation department of the Court and as such (a) hears all cases wherein a designation of complex case has been made and (b) conducts hearings, in cases that this court determines, on a preliminary basis may be complex, to determine whether the case should remain in the complex litigation program.
- 2. All counsel are required to appear in Dept. 17 on 09/25/15

at 8:30 a.m.

(a) If the case has been designated as complex, and no counterdesignation has been filed, the Court will hold its first case management conference at that time.

- (b) If the case has been assigned to Department 17 on a preliminary basis the Court will hold a hearing to determine if the matter is, or is not, complex. If the matter is determined to be complex, the Court will then proceed with the first case management conference.
- 3. Each party shall file and serve a Case Management Conference Statement five (5) days before this hearing and be prepared to participate effectively in the Conference, including being thoroughly familiar with the case and able to discuss the suitability of the case for private mediation, arbitration or the use of a special master or referee.
- 4. Prior to the conference counsel for plaintiff shall meet and confer with counsel for each other party in an effort to precisely define the the issues in the case, discuss the possiblity of early mediation, the identities of possible other parties, and their respective plans for discovery.
- 5. Until the time of the conference the following INTERIM ORDERS shall be in effect:

- A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficient time to have entered an appearance within the time allowed by law and to attend the first conference.
 B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.
 C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.
 D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different schedule. schedule.
- E. Counsel for each party shall do a conflict check to determine whether such counsel might have a possible conflict of interest as to any present or contemplated future party.

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BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP

Robert M. Bramson (Bar No. 102006) Jennifer S. Rosenberg (Bar No. 121023) 2125 Oak Grove Road, Suite 120 Walnut Creek, California 94598

Telephone: (925) 945-0200 Facsimile: (925) 945-8792

E-Mail: rbramson@bramsonplutzik.com

Attorneys for Plaintiff

· 2015 JUL 14 A 11: 5\$

CLERK OF THIS SUPERIOR COURT

CASE IS AS DEPT

TOPPOT CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

SANFORD J. WISHNEV, individually and on behalf of all others similarly situated,

Plaintiff,

٧.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, and DOES 1-10, inclusive

Defendants.

Case No.

COMPLAINT FOR DAMAGES, RESTITUTION, UNJUST ENRICHMENT AND DECLARATORY AND INJUNCTIVE RELIEF

Class Action

BYFAX

- 1. Plaintiff Sanford J. Wishnev ("plaintiff" or "Wishnev") brings this action on behalf of himself and all others similarly situated, stating claims for (1) Declaratory Relief, Code of Civil Procedure § 1060, (2) the Unfair Competition Law, Business & Professions Code § 17200 *et seq.*, (3) Initiative Measure, Stats. 1919, p. lxxxiii, §§ 2 and 3 (uncodified, but published as Civil Code §§1916–2, 1916–3), and (4) unjust enrichment and money had and received. All of these causes of action arise from defendant's pattern and practice of charging compound interest on life insurance policy and premium loans without a written agreement signed by the borrower providing for such compounding.
- 2. Defendant's practice of charging compound interest without a written agreement signed by the borrower providing for such compounding constitutes an unlawful business practice, barred by state law.

PARTIES

- 3. Plaintiff Sanford J. Wishnev is an individual residing in Contra Costa County, California and at all times relevant has been a California resident.
- 4. Defendant The Northwestern Mutual Life Insurance Company ("Northwestern Mutual") is a Wisconsin corporation whose principle place of business is in Milwaukee, Wisconsin. Northwestern Mutual conducts business in this state so as to make it subject to the general jurisdiction of the courts of this state. Northwestern Mutual has not designated a principal place of business in California and thus venue is proper in any county in this state.

LEGAL PRINCIPLES

- 6. Certain life insurance products, known generally as "permanent" life insurance, pay a benefit on the death of the insured and also accumulate a cash value. Examples of permanent life insurance include whole and universal life insurance.
- 7. One of the characteristics of permanent life insurance sold by Northwestern Mutual is that the policyholder is permitted to borrow amounts from Northwestern Mutual, generally up to the amount of the accumulated cash value of the policy. The policyholder can (but need not) repay the loan in cash or by designating some or all of the cash value of the policy for repayment. To the

extent that the insured dies with a loan balance remaining, Northwestern Mutual reduces the amount it pays as death benefits by the loan balance. Northwestern Mutual charges interest on the loan balance on an annual basis.

- 8. An initiative measure adopted by the voters of California in 1919 as part of the Usury Law, Civil Code Section 1916–2 provides:
 - [I]n the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest unless an agreement to that effect is clearly expressed in writing and signed by the party to be charged therewith. Any agreement or contract of any nature in conflict with the provisions of this section shall be null and void as to any agreement or stipulation therein contained to pay interest and no action at law to recover interest in any sum shall be maintained"
- 9. Also adopted in the same initiative measure, Civil Code section 1916–3, subdivision (a) further provides "[e]very person . . . who for any loan or forbearance of money, goods or things in action shall have paid or delivered any greater sum or value than is allowed to be received under the preceding [Section 1916–2] may either in person or his or its personal representative, recover in an action at law against the person . . . who shall have taken or received the same . . . treble the amount of the money so paid or value delivered in violation of [those provisions]"
- 10. The Section 1916-2 prohibition on charging compound interest or interest on interest unless the party to be charged has signed an agreement clearly authorizing such compounding, has been strictly applied by the California Supreme Court. "An agreement to pay compound interest must be embodied in a writing clear on its face and signed by the borrower." *McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1983) 33 Cal.3d 816, 821, 191 Cal.Rptr. 458; 662 P.2d 916.
- 11. Any agreement that does not comply with Section 1916–2 is null and void with respect to the payment of interest. *Id.* at 823.
- 12. Life insurance policy and premium loans are not exempt from the compound interest provision of the Usury Law.

ALLEGATIONS RELATING TO PLAINTIFF AND THE CLASS

13. Plaintiff is the holder of four life insurance policies, issued in 1967 ("Policy 1"), 1969 ("Policy 2"), 1973 ("Policy 3"), and 1976 ("Policy 4"). For each policy, plaintiff completed,

submitted, and signed an application. None of these applications authorized Northwestern Mutual to charge compound interest on the balances due on policy and/or premium loans or even disclosed that Northwestern Mutual might do so.

- 14. The policies subsequently issued to plaintiff state with respect to policy and premium loans, "Unpaid interest shall be added to and become part of the loan and shall bear interest on the same terms." But these policies were not provided to plaintiff until the contract to provide insurance was already in effect. Nor did plaintiff sign any of the policies. Thus, there was no "agreement to that effect [] clearly expressed in writing and signed by the party to be charged therewith", as required by Section 1916-2.
- 15. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 1.
- 16. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 2.
- 17. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 3.
- 18. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 4.
- 19. Plaintiff has never signed any agreement authorizing Northwest Mutual to charge him compound interest. Nevertheless, Northwestern Mutual has added compound interest to each of the loans referred to above.
- 20. Plaintiff is informed and believes and on that basis alleges that Northwestern Mutual's conduct with respect to plaintiff is representative of its conduct generally with policyholders to whom it makes policy and premium loans secured by the value of whole life insurance. Plaintiff believes that, as a uniform practice, Northwestern Mutual does not obtain from policyholders any agreement signed by them authorizing Northwestern Mutual to charge compound interest on policy and/or premium loans. On information and belief, Northwestern Mutual nevertheless charges and collects compound interest on such loans.

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CLASS ALLEGATIONS

21. This action is brought as a class action pursuant to Code of Civil Procedure section 382. The proposed class is defined as follows:

All California persons as to whom Northwestern Mutual's records show that they have been charged compound interest by Northwestern Mutual on life insurance policy and/or premium loan balances within the last four years.

- 22. On information and belief, the class numbers in the hundreds or thousands. Joinder of all class members is impracticable.
- 23. There are genuine questions of law and fact common to the class, which predominate over any individual questions. These common questions, which demonstrate a community of interest among class members, include:
 - a. Whether Northwestern Mutual had a uniform practice of charging compound interest on class members' policy and premium loans;
 - Whether Northwestern Mutual routinely and uniformly failed to obtain written, signed agreements from borrowers, including the members of the class, permitting the compounding of interest on policy and/or premium loans;
 - c. Whether Northwestern Mutual was required to comply with the provisions of Civil Code Section 1916–2;
 - d. Whether Northwestern Mutual's conduct is an unlawful business practice under the Unfair Competition Law:
 - e. Whether Northwestern Mutual's policy provisions providing for the collection of interest on policy or premium loans are null and void due to Northwestern Mutual's charging of compound interest without having obtained borrowers' signed, written agreement regarding the compounding of interest;
 - f. Whether Northwestern Mutual has been unjustly enriched by the retention of unlawfully obtained interest payments by class members;

- g. Whether a judicial declaration should issue that class members do not owe, and Northwestern Mutual is not entitled to collect, any interest whatsoever on currently outstanding policy or premium loans extended to class members;
- h. Whether Northwestern Mutual should be enjoined from continuing to collect interest on policy or premium loans where Northwestern
 Mutual failed to obtain borrowers' signed, written agreement regarding the compounding of interest;
- i. Whether Northwestern Mutual should be ordered to provide restitution to the class;
- j. Whether class members who have paid compound interest within the past year are entitled to an award of treble damages under Section
 1916–3 as a result of Northwestern Mutual's conduct.
- 24. The claims of plaintiff are typical of the claims of the class members. Each class member was subjected to the same unfair and illegal conduct of Northwestern Mutual, was harmed in the same way and has claims for relief under the same legal theories.
- 25. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has common interests with all members of the class and will vigorously protect the interest of the class through qualified counsel experienced in handling class action and consumer protection cases. Neither the named plaintiff nor class counsel has any interests which would conflict with the interests of the class members.
- 26. A class action is a superior method for the fair and efficient adjudication of this controversy. Most class members are unaware of the availability of any legal challenge to the interest they have been charged under their policies. Moreover, given the common questions to be resolved, class litigation is the superior method of resolving these legal challenges in one proceeding, thus avoiding a multiplicity of parallel suits. A class action will avoid the possibility of inconsistent adjudications of the same legal question.

FIRST CAUSE OF ACTION

(Declaratory Relief)

- 27. Plaintiff incorporates by reference the above-enumerated paragraphs of the Complaint as though fully restated herein.
- An actual and justiciable controversy exists between the parties as to their respective rights and obligations under life insurance policies which class members have obtained from Northwestern Mutual. Plaintiff, on behalf of the class, contends that any provisions in the policies or related documents purporting to permit Northwestern Mutual to charge compound interest on policy and premium loans are illegal, null, void, voidable, unconscionable and/or unenforceable. Plaintiff on behalf of the class further contends that, by the act of charging compound interest, Northwestern Mutual has ceded any entitlement to collect any interest whatsoever on said loans, as clearly provided by Civil Code Section 1916–2, which as an initiative adopted by the California electorate has greater dignity than a statute passed by the California Legislature. Plaintiff is informed and believes that defendant contends to the contrary.
- 29. Plaintiff seeks the following declarations regarding his obligations, and those of class members, under the Agreement:
 - a. Policy and premium loans made by Northwestern Mutual are subject to the requirements of Section 1916–2;
 - b. Northwestern Mutual may not enforce or collect, either directly or indirectly, and class members have no obligation to pay, either in cash, with applied dividends, through accumulated cash value or through death benefits, any interest accrued as of the date of judgment on policy or premium loans extended to class members.

WHEREFORE plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

(Unfair Competition Law, Bus. & Prof. Code §17200 et seq.)

30. Plaintiff incorporates the allegations of all the foregoing paragraphs by reference, as if fully set forth herein.

- 31. Northwestern Mutual engages in the practice of charging compound interest on policy and premium loans, without first obtaining a signed, written agreement authorizing the charging of compound interest from class members. This practice violates Civil Code Section 1916–2. Therefore, Northwestern Mutual's practice constitutes unlawful competition under the "unlawful" prong of the Unfair Competition Law, Bus. & Prof. Code §17200 et seq.
- 32. Plaintiff has suffered injury in fact and lost money or property as a result of Northwestern Mutual's acts of unfair competition.
- 33. Northwestern Mutual currently engages in this unlawful practice and, on information and belief, will continue to do so unless enjoined. As a result of these acts of unfair competition, Northwestern Mutual has obtained money or property, including but not limited to interest payments, from plaintiff and class members that it should not be permitted to retain. Plaintiff and the class are entitled to injunctive relief, restitution, and other equitable relief.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

(Initiative Measure, Stats. 1919, p. lxxxiii)

- 34. Plaintiff incorporates the allegations of the foregoing paragraphs by reference, as if fully set forth herein.
- 35. As alleged above, Northwestern Mutual has charged plaintiff and the class compound interest without having first obtained a signed agreement to such interest from plaintiff or class members.
- 36. On information and belief, Northwestern Mutual has acted willfully in violation of Initiative Measure, Stats. 1919, p. lxxxiii, published as Civil Code Sections 1916–2 and 1916–3, in charging and collecting compound interest from plaintiff and class members.
- 37. Pursuant to Section 1916–2, Northwestern Mutual is prohibited from collecting or charging interest on plaintiff's and class members' policy and/or premium loans.
- 38. Pursuant to Section 1916–3, class members are entitled to repayment from Northwestern Mutual of treble the amount of all interest paid or charged within one year past.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Money Had And Received And Unjust Enrichment)

- 39. Plaintiff incorporates the allegations of all the foregoing paragraphs by reference, as if fully set forth herein.
- 40. Northwestern Mutual, by the actions alleged above, has collected money from plaintiff and class members that by law Northwestern Mutual is not permitted to retain, and which belongs to plaintiff and the class.
- 41. Within the last two years, Northwestern Mutual has become indebted to plaintiff and class members in the amount of all excess interest paid within that period. No part of these sums have been repaid to plaintiffs or class members.
- 42. As a result of Northwestern Mutual's violations, described above, it has unjustly enriched itself at the expense of the class. Northwestern Mutual's unjust enrichment continues to accrue as it continues to engage in its unlawful business acts and practices and collect loan payments and excess interest, as described above.
- 43. Northwestern Mutual's retention of money gained through its unlawful practices is unjust considering the circumstances under which the funds were obtained.
- 44. As a result of the foregoing, plaintiff and members of the class have been deprived of their money and suffered loss as alleged above.
- 45. To prevent unjust enrichment, Northwestern Mutual should be required to identify, account for, fully refund, and provide restitution of its unlawfully-gotten gains including interest collected in excess of the legal maximum, and fruits of those gains, to plaintiff and the class. Defendant should be ordered to refund all sums paid to it, together with interest thereon and pay reasonable attorneys' fees and costs.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, requests and prays that this Court enter a judgment against Northwestern Mutual as follows:

- (a) Certifying this case as a class action with plaintiff as class representative and plaintiff's counsel as class counsel;
- (b) Declaring the respective rights and obligations of the parties under the interest provisions of the life insurance policies of plaintiff and those similarly situated;
- (c) Declaring the compound interest provisions of the life insurance policies of plaintiff and those similarly situated null and void;
- (d) Declaring that Northwestern Mutual may not collect, either directly or indirectly, and class members have no obligation to pay, either in cash, through accumulated cash value, applied dividends, or through death benefits, any interest accrued as of the date of judgment on policy or premium loans extended to class members;
- (e) Ordering Northwestern Mutual to restore to plaintiff and class members all amounts it has collected which may have been acquired by means of any practices found by this Court to be prohibited by law;
- (f) Permanently enjoining Northwestern Mutual from collecting or charging any interest on premium and policy loans made to plaintiff and class members;
 - (g) Awarding damages in amounts to be proven at trial;
- (h) Awarding treble the amount of all interest paid or equivalent value delivered by class members to Northwestern Mutual from one year prior to filing of this complaint to the date of final judgment;
 - (i) Awarding pre-judgment interest on all amounts awarded;
 - (j) Awarding costs of suit and attorneys' fees as authorized by law;
- (k) Granting such other and further relief as may be deemed just and proper in the premises.

Case3:15-cv-03797-EMC Document1 Filed08/19/15 Page26 of 53

1	Dated: July <u>13</u> , 2015	BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
2		1/71 P
3		Robert M. Bramson
4		Attorneys for Plaintiff
5		2125 Oak Grove Road, Suite 120
6		Walnut Creek, California 94598 Telephone: (925) 945-0200
7		Facsimile: (925) 945-8792
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SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF CONTRA COSTA

Plaintiff((s) / Cross Plaintiff(s)		
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Defendant(s) /	/ Cross Defendant(s)		
MUST SUBMIT THE ORDER FOR	R THE JUDGE'S SIGNA	HEIR CASE MANAGEMENT CONFE TURE AND FILE THIS FORM AT LE (NOT AVAILABLE IN COMPLEX LITI	AST 15 DAYS
PARTIES MUST ALSO SEND A C FAX: (925) 957-5689 MAIL: P.O. E		TIPULATION AND ORDER TO THE A 94553	ADR OFFICE:
Counsel and all parties agree to delay complete pre-ADR discovery as follow		it conference 90 days to attend ADF	R and
iii.	DR as follows: burt-connected Private; dicial Arbitration (non-bind ation ected by (date):	ding) Private (non-binding) (no more than 14 days (no more than 90 days after filing d) Additional page(s) attached) ar with and will fully comply with all loced with these services, and understa	after filing this form) this form) cal court rules related to and that if they do not,
without good cause, comply with this s	stipulation and all relevan	nt local court rules, they may be subject	ct to sanctions.
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Counsel for Plaintiff (print)	Fax	Counsel for Defendant (print)	Fax
Signature		Signature	
Pursuant to the Stipulation of the parties, he Case Management Conference set for 8:30 a.m. /) Plaintiff / Plaint	or is	s vacated and rescheduled for	at
Dated:		Judge of the Superio	or Court

SUPERIOR COURT - MAL INEZ COUNTY OF CONTRA COSTA MARTINEZ, CA 94553

SANFORD WISHNEY VS. THE NORTHWESTERN MUTUAL MSC15-01242

> NOTICE OF ASSIGNMENT TO DEPARTMENT SEVENTEEN FOR CASE MANAGEMENT DETERMINATION

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, AND A BLANK CASE MANAGEMENT STATEMENT ARE TO BE SERVED UPON ALL OPPOSING PARTIES, ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT.

- 1. This matter has been assigned to Department 17, Judge B. Goode presiding, for all purposes; Department 17 is designated as the complex litigation department of the Court and as such (a) hears all cases wherein a designation of complex case has been made and (b) conducts hearings, in cases that this court determines, on a preliminary basis may be complex, to determine whether the case should remain in the complex litigation program.
- 2. All counsel are required to appear in Dept. 17 on 09/25/15 at 8:30 a.m.

- (a) If the case has been designated as complex, and no counterdesignation has been filed, the Court will hold its first case management conference at that time.
 (b) If the case has been assigned to Department 17 on a preliminary basis the Court will hold a hearing to determine if the matter is, or is not, complex. If the matter is determined to be complex, the Court will then proceed with the first case management conference.
- 3. Each party shall file and serve a Case Management Conference Statement five (5) days before this hearing and be prepared to participate effectively in the Conference, including being thoroughly familiar with the case and able to discuss the suitability of the case for private mediation, arbitration or the use of a special master or referee.
- 4. Prior to the conference counsel for plaintiff shall meet and confer with counsel for each other party in an effort to precisely define the the issues in the case, discuss the possiblity of early mediation, the identities of possible other parties, and their respective plans for discovery.
- 5. Until the time of the conference the following INTERIM ORDERS shall be in effect:
 - A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficient time to have entered an appearance within the time allowed by law and to attend the first conference.

 B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.

- action might otherwise stipulate or the Court otherwise order.

 C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.

 D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different cohedular. schedule.
- E. Counsel for each party shall do a conflict check to determine whether such counsel might have a possible conflict of interest as to any present or contemplated future party.

		CM-010
ATTORNEY OR PARTY WITHOUT ATTORNEY (Number, State Ber Robert M. Bramson (SBN 102006) Jennifer	iumber, stid siddess);	FOR COURT USE ONLY
Bramson, Plutzik, Mahler & Birkhaeuser	3. Rosenberg (3DN 121023)	
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Walnut Creek, CA 94598		
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF CO	ntra Costa	· 2015 LUL 1 LI A 11: 54
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Uninsured motorist (46)	Rule 3.740 collections (09)	Antifrust/Trade regulation (03)
Other PI/PD/WD (Personal injury/Property Damage/Wrongful Death) Tort	Other collections (09)	Construction defect (10)
Asbestos (04)	Insurance coverage (18)	Mass tort (40)
Product liability (24)	Other contract (37)	Securities litigation (28)
Medical malpractice (45)	Real Property	Environmental/Toxic tort (30)
 	Eminent domain/Inverse (condemnation (14)	Insurance coverage claims arising from the above listed provisionally complex case
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Professional negligence (25)		Miscellaneous Civil Petition
Other non-PI/PD/WD tort (35)	Asset forfeiture (05)	Partnership and corporate governance (21)
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in sanctions.		
 File this cover sheet in addition to any cover 		
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EXHIBIT B

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a Wisconsin corporation, and DOES 1- YOU ARE BEING SUED BY PLAINTIFF:		12015 JUL 14 A 11: 55
(LO ESTÁ DEMANDANDO EL DEMANDA	·	STANCER OF THE SUBJECT COURT CLEPK OF THE SUBJECT COURT COUNTY OF CONTRACOSTA, CA
SANFORD I. WISHNEY, individually similarly situated	and on behalf of all others	COUNTY OF CONTRA COSTA, CA BY:
NOTICE! You have been sued. The court may decide below.	against you without your boing heard unless	
You have 30 CALENDAR DAYS after this summor served on the plaintiff. A latter or phone call will not places. There may be a court form that you can use for Online Self-Help Center (www.courtinfo.ca.gov/selfhethe court clerk for a fee waiver form. If you do not file may be taken without further warning from the court. There are other legal requirements. You may wan referral service. If you cannot afford an attornoy; you these nonprofit groups at the California Legal Service (www.courtinfo.ca.gov/selfhelp), or by contacting you costs on any settlement or arbitration eward of \$10.01 (AVISO) Lo han demandado. Si no responde dentre continuación. Tiene 30 DIAS DE CALENDARIO después de que corte y hacer que se entregue una capita al demanda en formala legal correcto si dosos que proceson su a Puede encontrar estos formularios de la corte y més hibitatoca de leyas de su condado o en la corte que le dé un formulario de exención de pago de cuota padrá quitar su suoldo, dinero y bienes sin más adver Hay ofros requisitos legales. Es recomendable que remisión a abagados. Si no puede pagar a un ebogado recupiados esta de legas. Altso: Par ley, la corte cualquier recuperación de \$10,000 ó más de velor repagar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de que la corte pegar el gravarmen de la corte enles de qu	rotect you. You written response must be in pryour response. You can find these court forms tiple, your county lew library, or the courthouse your response on time, you may lose the case to call an attorney right away. If you do not kn may be eligible for free legal services from a nis Web site (www.lawhelpcallfornia.org), the Critical court or county bar association. NOTE; DO or more in a child case. The court's lien must do 30 dies, la corte puede decidir an sir contra la entreguen este citación y papeles legales pinte. Una carta o una llamada lelefórica no la paso en la corto. Es posible que haya un formuninformación en el Centro de Ayuda de las Corte a quede más cerca. Si no puede pagar la cuata e quede más cerca. Si no puede pagar la cuata es contra la materia. Si no codo, os posible que cumpla con los requisitos prode encontrar estos grupos sin tines de lucro or la las Cortes de Collomia, flavor, sucortes que so fine derecho a ructamar las curtas y los cos fines derecho a ructamar las curtas y los cos cibide mediante un acquerdo o una concesión coloido mediante un acquerdo o una concesión coloido.	roper-tegal form if you want the court to hear your send more information at the California Courts nearest you. If you cannot pay the filling fee, ask by default, and your wages, money, and property now an attorney, you may want to call an ettorney coprofit legal services program. You can locate allifornia Courts Online Self-Help Center. The court has a stetutory lian for walved feas and the paid before the court will dismiss the case, as in escuchar au version. Lea la información a large presenter una respuesta por escrito tiene que estar lario que usted puede user para su respueste, les de California (www.sucorta.ca.gov), en for ada presentación, pida al secretario de la cone de perder el caso por incumplimiento y la corte le proce a un abogado, puede llamer a un servicio de are obtener servicios legales gratutios de un el sitio web de California Logal Services, por oponiendose en cantacto con la corte o el inos exentos por imponer un grevamen sobre
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SUMMONS

CCP 416.40 (association or partnership)

3. Ix on behalf of (specify): a Wisconsin corporation

CCP 416.20 (defunct corporation)

under: X CCP 416.10 (corporation)

other (specify):

4. by personal delivery on (date):

(Long of Chill Procedure \$5,472.20, 452 white countries a gov

CCP 416.60 (minor)

CCP 416.70 (conservates) CCP 416.90 (authorized person)

Case3:15-cv-03797-EMC Document1 Filed08/19/15 Page32 of 53

BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP Robert M. Bramson (Bar No. 102006)

Jennifer S. Rosenberg (Bar No. 121023) 2125 Oak Grove Road, Suite 120 Walnut Creek, California 94598 Telephone: (925) 945-0200

Facsimile: (925) 945-8792

E-Mail: rbramson@bramsonplutzik.com

Attorneys for Plaintiff

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CLERK OF THE SUFFERENCE COURT
COUNTY OF CONTRA COSTA, CA

PER LOCAL CASE IS AS DEPT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

SANFORD J. WISHNEV, individually and on behalf of all others similarly situated,

Plaintiff,

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, and DOES 1-10, inclusive

Defendants.

Case No.

COMPLAINT FOR DAMAGES,

RESTITUTION, UNJUST ENRICHMENT AND DECLARATORY AND INJUNCTIVE RELIEF

Class Action

BYFAX

- 1. Plaintiff Sanford J. Wishnev ("plaintiff" or "Wishnev") brings this action on behalf of himself and all others similarly situated, stating claims for (1) Declaratory Relief, Code of Civil Procedure § 1060, (2) the Unfair Competition Law, Business & Professions Code § 17200 et seq., (3) Initiative Measure, Stats. 1919, p. lxxxiii, §§ 2 and 3 (uncodified, but published as Civil Code §§1916–2, 1916–3), and (4) unjust enrichment and money had and received. All of these causes of action arise from defendant's pattern and practice of charging compound interest on life insurance policy and premium loans without a written agreement signed by the borrower providing for such compounding.
- 2. Defendant's practice of charging compound interest without a written agreement signed by the borrower providing for such compounding constitutes an unlawful business practice, barred by state law.

PARTIES

- 3. Plaintiff Sanford J. Wishnev is an individual residing in Contra Costa County, California and at all times relevant has been a California resident.
- 4. Defendant The Northwestern Mutual Life Insurance Company ("Northwestern Mutual") is a Wisconsin corporation whose principle place of business is in Milwaukee, Wisconsin. Northwestern Mutual conducts business in this state so as to make it subject to the general jurisdiction of the courts of this state. Northwestern Mutual has not designated a principal place of business in California and thus venue is proper in any county in this state.

LEGAL PRINCIPLES

- 6. Certain life insurance products, known generally as "permanent" life insurance, pay a benefit on the death of the insured and also accumulate a cash value. Examples of permanent life insurance include whole and universal life insurance.
- 7. One of the characteristics of permanent life insurance sold by Northwestern Mutual is that the policyholder is permitted to borrow amounts from Northwestern Mutual, generally up to the amount of the accumulated cash value of the policy. The policyholder can (but need not) repay the loan in cash or by designating some or all of the cash value of the policy for repayment. To the

extent that the insured dies with a loan balance remaining, Northwestern Mutual reduces the amount it pays as death benefits by the loan balance. Northwestern Mutual charges interest on the loan balance on an annual basis.

8. An initiative measure adopted by the voters of California in 1919 as part of the Usury Law, Civil Code Section 1916–2 provides:

[I]n the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest unless an agreement to that effect is clearly expressed in writing and signed by the party to be charged therewith. Any agreement or contract of any nature in conflict with the provisions of this section shall be null and void as to any agreement or stipulation therein contained to pay interest and no action at law to recover interest in any sum shall be maintained"

- 9. Also adopted in the same initiative measure, Civil Code section 1916–3, subdivision (a) further provides "[e]very person . . . who for any loan or forbearance of money, goods or things in action shall have paid or delivered any greater sum or value than is allowed to be received under the preceding [Section 1916–2] may either in person or his or its personal representative, recover in an action at law against the person . . . who shall have taken or received the same . . . treble the amount of the money so paid or value delivered in violation of [those provisions]"
- 10. The Section 1916-2 prohibition on charging compound interest or interest on interest unless the party to be charged has signed an agreement clearly authorizing such compounding, has been strictly applied by the California Supreme Court. "An agreement to pay compound interest must be embodied in a writing clear on its face and signed by the borrower." *McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1983) 33 Cal.3d 816, 821, 191 Cal.Rptr. 458; 662 P.2d 916.
- 11. Any agreement that does not comply with Section 1916–2 is null and void with respect to the payment of interest. *Id.* at 823.
- 12. Life insurance policy and premium loans are not exempt from the compound interest provision of the Usury Law.

ALLEGATIONS RELATING TO PLAINTIFF AND THE CLASS

13. Plaintiff is the holder of four life insurance policies, issued in 1967 ("Policy 1"), 1969 ("Policy 2"), 1973 ("Policy 3"), and 1976 ("Policy 4"). For each policy, plaintiff completed,

- 14. The policies subsequently issued to plaintiff state with respect to policy and premium loans, "Unpaid interest shall be added to and become part of the loan and shall bear interest on the same terms." But these policies were not provided to plaintiff until the contract to provide insurance was already in effect. Nor did plaintiff sign any of the policies. Thus, there was no "agreement to that effect [] clearly expressed in writing and signed by the party to be charged therewith", as required by Section 1916-2.
- 15. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 1.
- 16. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 2.
- 17. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 3.
- 18. On a date after 1980, Northwestern Mutual extended plaintiff a loan secured by the cash value and death benefit value of Policy 4.
- 19. Plaintiff has never signed any agreement authorizing Northwest Mutual to charge him compound interest. Nevertheless, Northwestern Mutual has added compound interest to each of the loans referred to above.
- 20. Plaintiff is informed and believes and on that basis alleges that Northwestern Mutual's conduct with respect to plaintiff is representative of its conduct generally with policyholders to whom it makes policy and premium loans secured by the value of whole life insurance. Plaintiff believes that, as a uniform practice, Northwestern Mutual does not obtain from policyholders any agreement signed by them authorizing Northwestern Mutual to charge compound interest on policy and/or premium loans. On information and belief, Northwestern Mutual nevertheless charges and collects compound interest on such loans.

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CLASS ALLEGATIONS

21. This action is brought as a class action pursuant to Code of Civil Procedure section 382. The proposed class is defined as follows:

All California persons as to whom Northwestern Mutual's records show that they have been charged compound interest by Northwestern Mutual on life insurance policy and/or premium loan balances within the last four years.

- 22. On information and belief, the class numbers in the hundreds or thousands. Joinder of all class members is impracticable.
- 23. There are genuine questions of law and fact common to the class, which predominate over any individual questions. These common questions, which demonstrate a community of interest among class members, include:
 - a. Whether Northwestern Mutual had a uniform practice of charging compound interest on class members' policy and premium loans;
 - b. Whether Northwestern Mutual routinely and uniformly failed to obtain written, signed agreements from borrowers, including the members of the class, permitting the compounding of interest on policy and/or premium loans;
 - c. Whether Northwestern Mutual was required to comply with the provisions of Civil Code Section 1916–2;
 - d. Whether Northwestern Mutual's conduct is an unlawful business practice under the Unfair Competition Law;
 - e. Whether Northwestern Mutual's policy provisions providing for the collection of interest on policy or premium loans are null and void due to Northwestern Mutual's charging of compound interest without having obtained borrowers' signed, written agreement regarding the compounding of interest;
 - f. Whether Northwestern Mutual has been unjustly enriched by the retention of unlawfully obtained interest payments by class members;

- g. Whether a judicial declaration should issue that class members do not owe, and Northwestern Mutual is not entitled to collect, any interest whatsoever on currently outstanding policy or premium loans extended to class members;
- h. Whether Northwestern Mutual should be enjoined from continuing to collect interest on policy or premium loans where Northwestern Mutual failed to obtain borrowers' signed, written agreement regarding the compounding of interest;
- i. Whether Northwestern Mutual should be ordered to provide restitution to the class;
- j. Whether class members who have paid compound interest within the past year are entitled to an award of treble damages under Section 1916–3 as a result of Northwestern Mutual's conduct.
- 24. The claims of plaintiff are typical of the claims of the class members. Each class member was subjected to the same unfair and illegal conduct of Northwestern Mutual, was harmed in the same way and has claims for relief under the same legal theories.
- 25. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has common interests with all members of the class and will vigorously protect the interest of the class through qualified counsel experienced in handling class action and consumer protection cases. Neither the named plaintiff nor class counsel has any interests which would conflict with the interests of the class members.
- 26. A class action is a superior method for the fair and efficient adjudication of this controversy. Most class members are unaware of the availability of any legal challenge to the interest they have been charged under their policies. Moreover, given the common questions to be resolved, class litigation is the superior method of resolving these legal challenges in one proceeding, thus avoiding a multiplicity of parallel suits. A class action will avoid the possibility of inconsistent adjudications of the same legal question.

FIRST CAUSE OF ACTION

(Declaratory Relief)

- 27. Plaintiff incorporates by reference the above-enumerated paragraphs of the Complaint as though fully restated herein.
- An actual and justiciable controversy exists between the parties as to their respective rights and obligations under life insurance policies which class members have obtained from Northwestern Mutual. Plaintiff, on behalf of the class, contends that any provisions in the policies or related documents purporting to permit Northwestern Mutual to charge compound interest on policy and premium loans are illegal, null, void, voidable, unconscionable and/or unenforceable. Plaintiff on behalf of the class further contends that, by the act of charging compound interest, Northwestern Mutual has ceded any entitlement to collect any interest whatsoever on said loans, as clearly provided by Civil Code Section 1916–2, which as an initiative adopted by the California electorate has greater dignity than a statute passed by the California Legislature. Plaintiff is informed and believes that defendant contends to the contrary.
- 29. Plaintiff seeks the following declarations regarding his obligations, and those of class members, under the Agreement:
 - a. Policy and premium loans made by Northwestern Mutual are subject to the requirements of Section 1916–2;
 - b. Northwestern Mutual may not enforce or collect, either directly or indirectly, and class members have no obligation to pay, either in cash, with applied dividends, through accumulated cash value or through death benefits, any interest accrued as of the date of judgment on policy or premium loans extended to class members.

WHEREFORE plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

(Unfair Competition Law, Bus. & Prof. Code §17200 et seq.)

30. Plaintiff incorporates the allegations of all the foregoing paragraphs by reference, as if fully set forth herein.

- 31. Northwestern Mutual engages in the practice of charging compound interest on policy and premium loans, without first obtaining a signed, written agreement authorizing the charging of compound interest from class members. This practice violates Civil Code Section 1916–2. Therefore, Northwestern Mutual's practice constitutes unlawful competition under the "unlawful" prong of the Unfair Competition Law, Bus. & Prof. Code §17200 et seq.
- 32. Plaintiff has suffered injury in fact and lost money or property as a result of Northwestern Mutual's acts of unfair competition.
- 33. Northwestern Mutual currently engages in this unlawful practice and, on information and belief, will continue to do so unless enjoined. As a result of these acts of unfair competition, Northwestern Mutual has obtained money or property, including but not limited to interest payments, from plaintiff and class members that it should not be permitted to retain. Plaintiff and the class are entitled to injunctive relief, restitution, and other equitable relief.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

(Initiative Measure, Stats. 1919, p. lxxxiii)

- 34. Plaintiff incorporates the allegations of the foregoing paragraphs by reference, as if fully set forth herein.
- 35. As alleged above, Northwestern Mutual has charged plaintiff and the class compound interest without having first obtained a signed agreement to such interest from plaintiff or class members.
- 36. On information and belief, Northwestern Mutual has acted willfully in violation of Initiative Measure, Stats. 1919, p. lxxxiii, published as Civil Code Sections 1916–2 and 1916–3, in charging and collecting compound interest from plaintiff and class members.
- 37. Pursuant to Section 1916–2, Northwestern Mutual is prohibited from collecting or charging interest on plaintiff's and class members' policy and/or premium loans.
- 38. Pursuant to Section1916–3, class members are entitled to repayment from Northwestern Mutual of treble the amount of all interest paid or charged within one year past.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Money Had And Received And Unjust Enrichment)

- 39. Plaintiff incorporates the allegations of all the foregoing paragraphs by reference, as if fully set forth herein.
- 40. Northwestern Mutual, by the actions alleged above, has collected money from plaintiff and class members that by law Northwestern Mutual is not permitted to retain, and which belongs to plaintiff and the class.
- 41. Within the last two years, Northwestern Mutual has become indebted to plaintiff and class members in the amount of all excess interest paid within that period. No part of these sums have been repaid to plaintiffs or class members.
- 42. As a result of Northwestern Mutual's violations, described above, it has unjustly enriched itself at the expense of the class. Northwestern Mutual's unjust enrichment continues to accrue as it continues to engage in its unlawful business acts and practices and collect loan payments and excess interest, as described above.
- 43. Northwestern Mutual's retention of money gained through its unlawful practices is unjust considering the circumstances under which the funds were obtained.
- 44. As a result of the foregoing, plaintiff and members of the class have been deprived of their money and suffered loss as alleged above.
- 45. To prevent unjust enrichment, Northwestern Mutual should be required to identify, account for, fully refund, and provide restitution of its unlawfully-gotten gains including interest collected in excess of the legal maximum, and fruits of those gains, to plaintiff and the class. Defendant should be ordered to refund all sums paid to it, together with interest thereon and pay reasonable attorneys' fees and costs.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, requests and prays that this Court enter a judgment against Northwestern Mutual as follows:

- (a) Certifying this case as a class action with plaintiff as class representative and plaintiff's counsel as class counsel;
- (b) Declaring the respective rights and obligations of the parties under the interest provisions of the life insurance policies of plaintiff and those similarly situated;
- (c) Declaring the compound interest provisions of the life insurance policies of plaintiff and those similarly situated null and void;
- (d) Declaring that Northwestern Mutual may not collect, either directly or indirectly, and class members have no obligation to pay, either in cash, through accumulated cash value, applied dividends, or through death benefits, any interest accrued as of the date of judgment on policy or premium loans extended to class members;
- (e) Ordering Northwestern Mutual to restore to plaintiff and class members all amounts it has collected which may have been acquired by means of any practices found by this Court to be prohibited by law;
- (f) Permanently enjoining Northwestern Mutual from collecting or charging any interest on premium and policy loans made to plaintiff and class members;
 - (g) Awarding damages in amounts to be proven at trial;
- (h) Awarding treble the amount of all interest paid or equivalent value delivered by class members to Northwestern Mutual from one year prior to filing of this complaint to the date of final judgment;
 - (i) Awarding pre-judgment interest on all amounts awarded;
 - (j) Awarding costs of suit and attorneys' fees as authorized by law;
- (k) Granting such other and further relief as may be deemed just and proper in the premises.

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1	Dated: July 13, 2015	BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
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3		Robert M. Bramson
4		Attorneys for Plaintiff
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Damage/Wrongful Death) Tort	Insurance coverage (18)	Mass tort (40)
Asbestos (04)	Other contract (37)	Securities litigation (28)
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Other PI/PD/WD (23)	condemnation (14)	above iisted provisionally complex case
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Superior Court of California, County of Contra Costa

NOTICE TO DEFENDANTS

In <u>Unlimited Jurisdiction</u> Civil Actions

YOU ARE BEING SUED. The packet you have been served should contain:

- a. The Summons
- b. The Complaint
- c. The Notice of Case Management (shows hearing date and time)
- d. Blank: Case Management Statement (Judicial Council Form CM-110)
- e. <u>Blank</u>: Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b)
- f. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c)



WHAT DO I DO NOW?



You must:

- 1. Prepare your response YOU COULD LOSE YOUR CASE—even before it is heard by a judge or before you can defend yourself, if you do not prepare and file a response on time. See the other side of this page for types of responses you can prepare.
- 2. Complete the Case Management Statement (CM-110)
- 3. File and serve your court papers on time Once your court forms are complete, you must file 1 original and 2 copies of the forms at court. An adult who is NOT involved in your case must serve one set of forms on the Plaintiff. If you were served in person you must file your response in 30 days. If the server left a copy of the papers with an adult living at your home or an adult in charge at your work or you received a copy by mail you must file your response in 40 days.
- 4. Prove you served your court papers on time by having your server complete a *Proof of Service*, (Judicial Council form POS-040), that must be filed at the court within 60 days.
- 5. Go to court on the date and time given in the Notice of Case Management Conference.
- 6. Consider trying to settle your case before trial if you and the other party to the case can agree to use mediation, arbitration or neutral case evaluation, the <u>Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days</u> can be filed with your other papers. For more information read the enclosed ADR information, visit <u>www.cc-courts.org/adr</u>, or call (925) 957-5787.

IMPORTANT! The court recommends consulting an attorney for all or part of your case. While you may represent yourself, lawsuits can be complicated, and the court cannot give you legal advice.

<u>COURT FEES:</u> You must pay court fees the first time you file your papers. If you also file a motion, you must pay another fee. If you cannot afford the fees, you may ask the court to waive (allow you not to pay) fees. Use Judicial Council forms FW-001-INFO [information sheet]; FW-001 [application]; and FW-003 [order].

<u>COURT FORMS:</u> Buy forms at the Forms Window in the Family Law Building or download them for free at: <u>www.courtinfo.ca.gov/forms/</u>

Local Court Form -- Instructions CV-666d/Rev. 11/06/2007

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF CONTRA COSTA

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Defendant(s	i) / Cross Defendant(s	CASE NO:	
MUST SUBMIT THE ORDER F	OR THE JUDGE'S	YING THEIR CASE MANAGEMENT CONFERENC SIGNATURE AND FILE THIS FORM AT LEAST? ENCE. (NOT AVAILABLE IN COMPLEX LITIGATION	15 DAYS
 PARTIES MUST ALSO SEND A FAX: (925) 957-5689 MAIL: P.O 	BOX 911, MARTIN	ILED STIPULATION AND ORDER TO THE ADR NEZ, CA 94553	OFFICE:
Counsel and all parties agree to dela complete pre-ADR discovery as follo 1. <u>Selection and scheduling for Altama</u> a. The parties have agreed to	ows: ative <u>Dispute Resol</u> t	gement conference 90 days to attend ADR and	
i. □ Mediation (□ 0 ii. □ Arbitration (□ J iii. □ Neutral case eval	Court-connected Dudicial Arbitration (r luation elected by (date): (date):	Private) non-binding) Private (non-binding) Private (no more than 14 days after filing this f	
a. Written discovery: (I. Interrogatories to ii. Request for Prod iii. Request for Adml iv. Independent Med v. Other: b. Deposition of the followi	Additional page(s) : uction of Document lssions to: lical Evaluation of: ng parties or witnes		
ii. iii. c. ② No Pre-ADR discovery r 3. The parties also agree:	needed		//wied-rosstry Billion-dur-van-se-der Roman-van-se stede
ADR as provided in Appendix C,	will pay the fees a	re familiar with and will fully comply with all local co associated with these services, and understand to relevant local court rules, they may be subject to	hat if they do not,
Counsel for Plaintiff (print)	Fax	Counsel for Defendant (print)	Fax
Signature		Signature	destriction of the second of t
Counsel for Plaintiff (print)	Fax	Counsel for Defendant (print)	Fax
Signature	200	Signature	MH111.
the Case Management Conference set	t for	ne Case Management Order to be filed, IT IS SO C is vacated and rescheduled for ust notify all parties of the new case managem	at
Dated:		Judge of the Superior Co	eurt

	CM-110
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Ber number, and address):	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. (Optional):	
E-MAII, ADDRESS (Optional):	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
CASE MANAGEMENT STATEMENT	GASE NUMBER:
(Check one): UNLIMITED CASE LIMITED CASE (Amount demanded exceeds \$25,000) or less)	
A CASE MANAGEMENT CONFERENCE is scheduled as follows:	The second secon
	Div.: Room:
Address of court (if different from the address above):	
Notice of Intent to Appear by Telephone, by (name):	
INSTRUCTIONS: All applicable boxes must be checked, and the specified	d information must be provided.
1. Party or parties (answer one):	
a. This statement is submitted by party (name):	
b. This statement is submitted jointly by parties (names):	
2. Complaint and cross-complaint (to be enswered by plaintiffs and cross-complainan	ts only)
a. The complaint was filed on (date):	
b. The cross-complaint, if any, was filed on (date):	
3. Service (to be answered by plaintiffs and cross-complainants only)	
a. All parties named in the complaint and cross-complaint have been served	, have appeared, or have been dismissed.
b. The following parties named in the complaint or cross-complaint	
(1) have not been served (specify names and explain why not):	
(2) have been served but have not appeared and have not been	dismissed (specify names):
	,
(3) have had a default entered against them (specify names):	
c. The following additional parties may be added (specify names, nature of it they may be served):	nvolvement in case, and date by which
4 Population of acco	•
Description of case a. Type of case in complaint cross-complaint (Describe,)	including causes of action):

1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	ATT THE ASSESSMENT ACTIONS OF	LACE ADMARE
PLAINTIFF/PETITION		CASE NUMBER:
DEFENDANT/RESPONDS 10. c. Indicate the ADR p have already partic		or parties are willing to participate in, have agreed to participate in, or provide the specified information):
	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation		Mediation session not yet scheduled Mediation session scheduled for (date): Agreed to complete mediation by (date): Mediation completed on (date):
(2) Settlement conference		Settlement conference not yet scheduled Settlement conference scheduled for (date): Agreed to complete settlement conference by (date): Settlement conference completed on (date):
(3) Neutral evaluation		Neutral evaluation not yet scheduled Neutral evaluation scheduled for (date): Agreed to complete neutral evaluation by (date): Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration		Judicial arbitration not yet scheduled Judicial arbitration scheduled for (date): Agreed to complete judicial arbitration by (date): Judicial arbitration completed on (date);
(5) Binding private arbitration		Private arbitration not yet scheduled Private arbitration scheduled for (date): Agreed to complete private arbitration by (date): Private arbitration completed on (date):
(6) Other (specify):		ADR session not yet scheduled ADR session scheduled for (date): Agreed to complete ADR session by (date): ADR completed on (date):

Case3:15-cv-03797-EMC Document1 Filed08/19/15 Page48 of 53

	CM-11(
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	No. 100 April 10
of Civil Procedure sections 90-98 will apply to this case. b. This is a limited civil case and a motion to withdraw the	\$25,000 or less) and the economic litigation procedures in Code case from the economic litigation procedures or for additional by economic litigation procedures relating to discovery or trial
18. Other issues The party or parties request that the following additional maconference (specify):	atters be considered or determined at the case management
 19. Meet and confer a The party or parties have met and conferred with all party of Court (if not, explain): 	ties on all subjects required by rule 3.724 of the California Rules
 After meeting and conferring as required by rule 3.724 of the (specify): 	California Rules of Court, the parties agree on the following
20. Total number of pages attached (If any):	authority to enter into stipulations on these issues at the time of
	>
(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)
	>
(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY) Additional signatures are attached.



CONTRA COSTA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

All judges in the Civil Trial Delay Reduction Program agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the Case Management Form (CM-110);
- File a Stipulation and Order to Attend ADR and Continue First Case Management Conference 90-Days (local court form); or
- Agree to ADR at your first court appearance.

Questions? Call (925) 957-5787, or go to www.cc-courts.org/adr

MEDIATION

Mediation is often faster and less expensive than going to trial. Mediators help people who have a dispute talk about ways they can settle their case. Parties call or visit the ADR Programs office to get a list of mediators. After parties have agreed on a mediator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the mediator at least 5 court days before mediation starts.

ALL parties and attorneys must go to mediation. Mediation can be held whenever and wherever the parties and the mediator want, as long as they finish before the court deadline. In some kinds of court cases, parties have the chance to mediate in the courthouse on their trial day.

Most mediators begin by talking with the parties together, helping them focus on the important issues. The mediator may also meet with each party alone. Mediators often ask parties for their ideas about how to settle the case. Some mediators tell the parties how much money they think a case is worth, or tell them what they think might happen if the case went to trial. Other mediators help the parties decide these things for themselves. No matter what approach a mediator takes, decisions about settling a case can only be made when all the parties agree.

If the parties go through the court ADR program, mediators do not charge fees for the first half hour spent scheduling or preparing for mediation. They also do not charge fees for the first two hours of mediation. If parties need more time, they must pay that person's regular fees. Some mediators ask for a deposit before mediation starts. Mediators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the mediation. A party whose court fees have been waived (cancelled) may ask if their mediation fees or deposit can be waived.

If parties agree about how they will settle their case, they can choose to keep it private, write it up as a contract, or ask the judge to make it a court order. What parties say and agree to in mediation is confidential (private).

PRIVATE MEDIATION

Private mediation works in the same way as judicial mediation, but the parties do not go through the ADR Programs office. Parties choose a mediator on their own, and pay the mediator's normal fees.

TEMPORARY JUDGE

Some parties want a trial, but want to choose who will decide the case and when the trial will take place. Parties can agree on an attorney that they want the court to appoint as a temporary judge for their case. (See Article 6, Section 21 of the State Constitution and Rule 2.830 of the California Rules of Court.) Temporary judges have nearly the same authority as a superior court judge to conduct a trial and make decisions. As long as the parties meet the court deadline, they can schedule the trial at their own and the temporary judge's convenience.

Each of the temporary judges on the court's panel has agreed to serve at no charge for up to 5 court days. If the parties need more time, they must pay that person's regular fees. All parties and their lawyers must attend the trial, and provide a copy of all briefs or other court documents to the temporary judge at least two weeks before the trial. These trials are similar to other civil trials, but are usually held outside the court. The temporary judge's decision can be appealed to the superior court. There is no option for a jury trial. The parties must provide their own court reporter.

SPECIAL MASTER

A special master is a private lawyer, retired judge, or other expert appointed by the court to help make day-to-day decisions in a court case. The special master's role can vary, but often includes making decisions that help the discovery (information exchange) process go more smoothly. He or she can make decisions about the facts in the case. Special masters can be especially helpful in complex cases. The trial judge defines what the special master can and cannot do in a court order.

Special masters often issue both interim recommendations and a final report to the parties and the court. If a party objects to what the special master decides or reports to the court, that party can ask the judge to review the matter. In general, the parties choose (by stipulation) whom they want the court to appoint as the special master, but there are times (see California Code of Civil Procedure Section 639), when the court may appoint a special master or referee without the parties' agreement. The parties are responsible to pay the special master's regular fees.

COMMUNITY MEDIATION SERVICES

Mediation Services are available through non-profit community organizations. These low-cost services are provided by trained volunteer mediators. For more information about these programs contact the ADR Program at (925) 957-5787

SUPERIOR COURT - MAL INEZ COUNTY OF CONTRA COSTA MARTINEZ, CA 94553

SANFORD WISHNEY VS. THE NORTHWESTERN MUTUAL MSC15-01242

> NOTICE OF ASSIGNMENT TO DEPARTMENT SEVENTEEN FOR CASE MANAGEMENT DETERMINATION

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, AND A BLANK CASE MANAGEMENT STATEMENT ARE TO BE SERVED UPON ALL OPPOSING PARTIES, ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT.

- 1. This matter has been assigned to Department 17, Judge B. Goode presiding, for all purposes; Department 17 is designated as the complex litigation department of the Court and as such (a) hears all cases wherein a designation of complex case has been made and (b) conducts hearings, in cases that this court determines, on a preliminary basis may be complex, to determine whether the case should remain in the complex litigation program.
- 2. All counsel are required to appear in Dept. 17 on 09/25/15 at 8:30 a.m.

(a) If the case has been designated as complex, and no counter-designation has been filed, the Court will hold its first

- case management conference at that time.

 (b) If the case has been assigned to Department 17 on a preliminary basis the Court will hold a hearing to determine if the matter is, or is not, complex. If the matter is determined to be complex, the Court will then proceed with the first case management conference.
- 3. Each party shall file and serve a Case Management Conference Statement five (5) days before this hearing and be prepared to participate effectively in the Conference, including being thoroughly familiar with the case and able to discuss the suitability of the case for private mediation, arbitration or the use of a special master or referee.
- 4. Prior to the conference counsel for plaintiff shall meet and confer with counsel for each other party in an effort to precisely define the the issues in the case, discuss the possiblity of early mediation, the identities of possible other parties, and their respective plans for discovery.
- 5. Until the time of the conference the following INTERIM ORDERS shall be in effect:
 - A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficient time to have entered an appearance within the time allowed by law and to attend the first conference.

 B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.

 C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.

 D. Within the time for any party to file an answer or demurrer

- D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different schedule.
- E. Counsel for each party shall do a conflict check to determine whether such counsel might have a possible conflict of interest as to any present or contemplated future party.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF CONTRA COSTA

P	laintiff(s) / Cross Plaintiff(s)		
vs.		ADR Case Management Stip (Unlimited Jurisdiction	
Defend	ant(s) / Cross Defendant(s)	CASE NO: _	
MUST SUBMIT THE ORDE	R FOR THE JUDGE'S !	ING THEIR CASE MANAGEMENT CONFER SIGNATURE AND FILE THIS FORM AT LEA	ST 15 DAYS
► PARTIES MUST ALSO SEN FAX: (925) 957-5689 MAIL:	ND A COPY OF THIS FILE P.O. BOX 911, MARTIN	LED STIPULATION AND ORDER TO THE A NEZ, CA 94553	DR OFFICE:
Counsel and all parties agree to complete pre-ADR discovery as	delay their case mana follows:	gement conference 90 days to attend ADR	and
ii.	d to ADR as follows: Court-connected In Induction (nevaluation per selected by (date): Induction per selected by (date): Induction per selected by (date): Induction of books per	Private) on-binding)	fter filing this form) his form) al court rules related to
Counsel for Plaintliff (print)	Fax	Counsel for Defendant (print)	Fax
Signature		Signature	
Counsel for Plaintiff (print)	Fax	Counsel for Defendant (print)	Fax
Signature		Signature	
the Case Management Conference	set for	e Case Management Order to be filed, IT IS Se is vacated and rescheduled for st notify all parties of the new case manag	at
Dated:		Judge of the Superior	Court

SUPERIOR COURT - MAL INEZ COUNTY OF CONTRA COSTA MARTINEZ, CA 94553

SANFORD WISHNEY VS. THE NORTHWESTERN MUTUAL MSC15-01242

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A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficient time to have entered an appearance within the time allowed by law and to attend the first conference.
B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.
C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.
D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different schedule.

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